

108TH CONGRESS
2D SESSION

H. R. 4919

To amend part D of title XVIII of the Social Security Act to provide for the offering of a Federal national prescription drug discount card program.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2004

Mr. ALLEN (for himself and Mr. MICHAUD) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend part D of title XVIII of the Social Security Act to provide for the offering of a Federal national prescription drug discount card program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare Drug Card Guaranteed Savings Act”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) Americans who buy their own prescription
8 drugs often pay twice as much for prescription drugs

1 as consumers in foreign nations or as the price the
2 Department of Veterans Affairs obtains by negoti-
3 ating directly with the pharmaceutical manufactur-
4 ers. In some cases, older Americans pay 10 times
5 more for prescription drugs than such customers.
6 Prescription drug prices have increased 3.4 percent
7 during the first quarter of 2004, nearly three times
8 the rate of inflation.

9 (2) The Medicare Prescription Drug, Improve-
10 ment, and Modernization Act of 2003 (Public Law
11 No: 108–173) established a program for the en-
12 dorsement of medicare drug discount card programs
13 in order to provide for reduced prices for drugs for
14 medicare beneficiaries and provide a subsidy for low-
15 income medicare beneficiaries.

16 (3) There are currently more than 70 endorsed
17 medicare drug discount card programs. Medicare
18 drug discount card programs can change the drugs
19 that they offer and the size of the discounts every
20 seven days. Medicare beneficiaries are allowed to
21 change their current medicare drug discount card
22 program only once, during an annual enrollment pe-
23 riod between November 15 and December 31, 2004.

24 (4) Enrollment in medicare drug discount card
25 programs has been less than projected due to the

1 complexity of the programs, the limited number of
2 drugs covered under most programs, the changing
3 prescription drug needs of beneficiaries, and bene-
4 ficiaries' concern that the programs do not guar-
5 antee real savings on prescription drug purchases.
6 As of July 19, 2004, fewer than 14 percent of low-
7 income medicare beneficiaries who qualify for the
8 \$600 subsidy under the law have enrolled in a medi-
9 care drug discount card program.

10 (5) Currently, medicare discount drug card
11 sponsors are required to pass on to enrollees only an
12 undefined "share" of the rebates they secure from
13 drug manufacturers and card sponsors can use the
14 remaining savings for administrative costs and prof-
15 it. The law does not require the sponsors to reveal
16 to enrollees the size of the rebates secured from
17 drug manufacturers or to disclose what portion of
18 those rebates are kept by the sponsors and not
19 passed on to enrollees.

20 (6) There is a need for a Federal national
21 medicare prescription drug discount card program
22 that offers guaranteed discounts on all prescription
23 drugs and that aggregates the buying power of all
24 medicare beneficiaries in order to negotiate signifi-
25 cant reductions in price.

1 **SEC. 2. OFFERING OF FEDERAL NATIONAL PRESCRIPTION**
2 **DRUG DISCOUNT CARD PROGRAM.**

3 (a) OFFERING OF PROGRAM.—

4 (1) IN GENERAL.—Subsection (a)(1) of section
5 1860D–31 of the Social Security Act (42 U.S.C.
6 1395w–141) is amended—

7 (A) by striking “and” at the end of sub-
8 paragraph (A);

9 (B) by striking the period at the end of
10 subparagraph (B) and inserting “; and”; and

11 (C) by adding at the end the following new
12 subparagraph:

13 “(C) to provide for the offering of a Fed-
14 eral national prescription drug discount card
15 program that is available for discount card eli-
16 gible individuals throughout the United States
17 (including the territories) and that meets the
18 requirements under subsection (l)(1) in addition
19 to the requirements otherwise applicable to an
20 endorsed discount card program.”.

21 (2) EXCLUSIVE PROGRAM IN 2005.—Subsection
22 (c)(1)(C) of such section is amended—

23 (A) in clause (i), by striking “clauses (ii)
24 and (iii)” and inserting “clauses (ii) through
25 (iv)”; and

1 (B) by adding at the end the following new
2 clause:

3 “(iv) LIMITATION TO ENROLLMENT IN
4 FEDERAL NATIONAL PRESCRIPTION DRUG
5 DISCOUNT CARD PROGRAM IN 2005.—Not-
6 withstanding any other provision of this
7 section, for periods beginning with January
8 1, 2005, the only discount card program in
9 which an individual may be enrolled under
10 this section shall be the Federal national
11 prescription drug discount card program
12 described in subsection (l). Individuals en-
13 rolled in another program as of December
14 31, 2004, who do not affirmatively
15 disenroll from all discount card programs
16 under this section are deemed to be en-
17 rolled in such Federal national prescription
18 drug discount card program.”.

19 (b) ADDITIONAL PROGRAM REQUIREMENTS.—Such
20 section is further amended by adding at the end the fol-
21 lowing new subsection:

22 “(l) PROVISIONS RELATING TO FEDERAL NATIONAL
23 PRESCRIPTION DRUG DISCOUNT CARD PROGRAM.—

24 “(1) ADDITIONAL REQUIREMENTS.—The Fed-
25 eral national prescription drug discount card pro-

1 gram described in subsection (a)(1)(C) shall also
2 meet the following requirements:

3 “(A) DISCOUNTED PRICES.—Through di-
4 rect negotiations with prescription drug manu-
5 facturers, the discounted prices offered under
6 the program shall be less than prices otherwise
7 available in the retail market. Through such ne-
8 gotiations, the Secretary shall obtain discounted
9 prices that are at least as low as the manufac-
10 turer’s average foreign price (as defined in
11 paragraph (3)) for the drug involved.

12 “(B) PASSING THROUGH ALL SAVINGS.—
13 The full amount of discounted savings are
14 passed through to enrollees.

15 “(C) FEE FOR CARD.—The annual fee for
16 enrollment in the program shall be \$30 (except
17 as provided under subparagraphs (E) through
18 (G) of subsection (c)(1)), which fees shall be
19 available to the Secretary for administrative ex-
20 penses in offering such program.

21 “(D) NATIONAL AVAILABILITY.—The pro-
22 gram shall be made available to individuals re-
23 siding anywhere in the United States.

24 “(E) HANDLING FEE FOR PHAR-
25 MACISTS.—The program shall be designed to

1 provide for a reasonable handling fee for phar-
2 macists in connection with the provision of
3 drugs obtained under the program and shall be
4 approximately equal to the average handling fee
5 for pharmacists of other large insurance plans
6 that administer drug benefits.

7 “(2) OVERSIGHT.—The oversight authority of
8 the Secretary under subsection (i)(2) with respect to
9 such Federal national prescription drug discount
10 card program shall be exercised by the Inspector
11 General of the Department of Health and Human
12 Services.

13 “(3) AVERAGE FOREIGN PRICE DEFINED.—

14 “(A) IN GENERAL.—For purposes of this
15 subsection, the term ‘average foreign price’
16 means, with respect to a covered discount card
17 drug, the average price that the manufacturer
18 of the drug realizes on the sale of drugs with
19 the same active ingredient or ingredients that
20 are consumed in Canada, France, Germany,
21 Italy, Japan, and the United Kingdom, taking
22 into account—

23 “(i) any rebate, contract term or con-
24 dition, or other arrangement (whether with
25 the purchaser or other persons) that has

1 the effect of reducing the amount realized
2 by the manufacturer on the sale of the
3 drugs;

4 “(ii) adjustments for any differences
5 in dosage, formulation, or other relevant
6 characteristics of the drugs; and

7 “(iii) any other contract or side agree-
8 ment that has the effect of adjusting the
9 effective price of the drug, including agree-
10 ments to purchase non-drug products.

11 “(B) EXEMPT TRANSACTIONS.—The Sec-
12 retary may, by regulation, exempt from the cal-
13 culation of the average foreign price of a drug
14 those prices realized by a manufacturer in
15 transactions that are entered into for charitable
16 purposes, for research purposes, or under other
17 unusual circumstances, if the Secretary deter-
18 mines that the exemption is in the public inter-
19 est and is consistent with the purposes of this
20 section.”.

21 (c) CONFORMING AMENDMENTS.—Such section is
22 further amended—

23 (1) in subsection (h)(1)(A), by adding after and
24 below clause (v) the following new sentence:

1 “Such term also includes the Secretary with re-
2 spect to the offering of the Federal national
3 prescription drug discount card program de-
4 scribed in subsection (a)(1)(C).”;

5 (2) in subsection (h)(2)(A), by adding at the
6 end the following: “The Secretary shall establish a
7 separate procedure for the qualification of the Fed-
8 eral national prescription drug discount card pro-
9 gram described in subsection (a)(1)(C).”; and

10 (3) in subsection (k)(6), by inserting before the
11 period at the end the following: “, except in the case
12 of the Federal national prescription drug discount
13 card program described in subsection (a)(1)(C)”.

14 (d) IMPLEMENTATION.—

15 (1) AVAILABILITY OF FUNDS.—Notwith-
16 standing any other provision of law, funds provided
17 under section 1015 of the Medicare Prescription
18 Drug, Improvement, and Modernization Act of 2003
19 (Public Law 108–173) shall be available to the Sec-
20 retary of Health and Human Services for reasonable
21 administrative costs in offering the Federal national
22 prescription drug discount card program described
23 in section 1860D–31(a)(1)(C) of the Social Security
24 Act, as added by subsection (a).

1 (2) TIMELY IMPLEMENTATION.—The Secretary
2 shall take such steps as may be required to provide
3 for the offering of such program during the annual
4 open enrollment period occurring in November,
5 2004.

○